

## Appendix C. Curriculum Vitae of David W. DeRamus, PhD

### C.1. Summary of experience

David W. DeRamus is a founding member of Bates White Economic Consulting and is active in several of the firm's practices, including Transfer Pricing and Tax, Antitrust and Competition, Commercial Litigation, International Arbitration, and Energy. He specializes in economic and financial analysis, quantitative modeling, transfer pricing analysis, antitrust analysis, damages analysis, and valuation. Dr. DeRamus has an extensive background in industrial organization, international economics, antitrust economics, microeconomics, finance, financial modeling, and statistical analysis.

### C.2. Education

- PhD, Economics, University of Massachusetts at Amherst
- MA, Economics, University of Massachusetts at Amherst
- BA, Political Science (*magna cum laude*), Duke University

### C.3. Selected transfer pricing and tax experience

- On behalf of the US Department of Justice, served as economic expert in *Perrigo Company and Subsidiaries v. United States of America*. U.S. District Court, Western District of Michigan (No. 1:17-cv-00737.) Testified on transfer pricing issues and the structuring of certain related party transactions by a pharmaceutical company.
- Analyzed transfer pricing issues and various intellectual property issues for several large multinational pharmaceutical companies. Determined arm's-length royalties for related party licenses for the production and sale of certain prescription drugs; identified and evaluated comparable licensing transactions; and analyzed prices associated with a range of intercompany services and other intercompany transactions.
- Conducted numerous transfer pricing studies for tax planning, documentation, audits, Advance Pricing Agreements (APAs), and litigation. Clients include large multinational companies involved in automotive manufacturing, medical products, computer software/hardware, industrial equipment, retail clothing, food products, tobacco, alcoholic and non-alcoholic beverages, oil

drilling services, package delivery services, shipping, machinery, pharmaceuticals, and industrial products.

- Prepared transfer pricing documentation, planning, and APA studies for a multinational company undergoing a major restructuring.
- Prepared numerous transfer pricing analyses on behalf of several international automotive manufacturers, used for documentation, planning, and audit on a global basis. Evaluated policies and pricing for related-party transactions with respect to the arm's-length standard under US, Mexico, and OECD guidelines. Analyzed transfer pricing issues related to finished vehicles, engines, transmissions, other components, royalties, and services. Developed cost-sharing arrangements; addressed issues related to APAs and Competent Authority proceedings; and assisted with audit and controversy proceedings.
- Submitted various expert reports in transfer pricing disputes before the Mexican tax authority (Servicio de Administración Tributaria) related to transfer pricing. These reports evaluated whether certain related-party transactions were consistent with the arm's length standard under OECD and Mexican transfer pricing guidelines.
- Submitted expert report in a transfer pricing dispute before the tax authority of Ecuador (Servicio de Rentas Internas). Report evaluated whether certain related-party transactions were consistent with the arm's length standard and the OECD guidelines.
- Designed, managed, and implemented intellectual property-related planning initiatives for large multinational clients in manufacturing, computer, telecommunications, and consumer product industries. Designed R&D cost sharing arrangements and prepared transfer pricing documentation for tax compliance.
- Analyzed the impact of a private-label credit card on a large retailer's sales and profits in a major tax dispute. Developed a robust statistical model using the company's point-of-sale data, credit card data, and customer demographic information. Tax dispute resolved in favor of the client based on this analysis.
- Estimated value of automotive engine technology for large international automotive manufacturer. Study prepared for tax and financial reporting purposes.
- Analyzed impact of proposed tax policies on international trade flows, prices, and certain industries.
- Conducted extensive empirical research on the impact of R&D and advertising on profitability; analyzed the impact of foreign exchange rate fluctuations on US prices.
- Analyzed tax policies directed at the US ethanol industry, quantifying the impact of the expiration of the Voluntary Ethanol Excise Tax Credit (VEETC) and a tariff on US ethanol imports.

## C.4. Selected litigation experience

- Serving as testifying expert on antitrust issues and damages in *Rockwell Automation v. Radwell International*, U.S. District Court, District of New Jersey (15-cv-05246 (RBK) (JS)), a case involving Lanham Act trademark infringement claims and antitrust counterclaims.
- Submitted expert testimony in *In re Certain Programmable Logic Controllers (PLCs), Components Thereof, and Products Containing Same*, United States International Trade Commission Investigation No. 337-TA-1105. Analyzed market definition, monopoly power, monopolization, and other antitrust claims. Also analyzed alleged trademark infringement.
- Submitted testimony in *State of Mississippi, ex. Rel. Jim Hood, Attorney General for the State of Mississippi v. Entergy Mississippi, Inc. et al.*, U.S. District Court for the Southern District of Mississippi (Civil Action No. 3:08cv780-CWR-LRA). Analyzed Defendants' alleged failure to purchase adequate amounts of lower-cost electric power from third parties; estimated damages to Plaintiff resulting from the alleged conduct.
- Submitted a declaration on behalf of plaintiffs in *Electric Power Supply Association et al. v. Anthony M. Starr et al.* in U.S. District Court for the Northern District of Illinois Eastern Division (Case No. 17-cv-01164). Analyzed the impact of the Illinois Zero Emissions Credit on wholesale electricity markets.
- Served as a Technical Expert in a contract dispute between two petrochemical companies in administered expert proceedings before the International Chamber of Commerce (ICC)/International Centre for ADR. The scope of the assignment was to determine an appropriate reference price to be used by the Parties for the remaining period of a long-term supply contract.
- Served as testifying expert in *XY, LLC v. Trans Ova Genetics LLC*, a patent infringement and antitrust dispute in the livestock reproductive services industry. Testified on behalf of Counterclaim Plaintiff Trans Ova Genetics on issues related to relevant market definition, monopoly power, anticompetitive conduct, antitrust damages, and patent infringement damages.
- Served as testifying expert before the International Center for Settlement of Investment Disputes in a royalty dispute involving a major natural gas extraction and LNG project in Latin America. The LNG produced from the project was exported to customers in Mexico, the United States, and other global natural gas markets. Testified on behalf of a consortium of producers on issues related to the economics of the contract, industry practices, the impact on the parties of recent developments in global natural gas markets, the commercial causes and consequences of "re-exports" from certain global LNG terminals, the appropriate calculation of royalties, and damages.

- Served as testifying expert in *Allure Energy, Inc. v. Nest Labs, Inc.* on behalf of defendant Nest Labs. Performed economic analysis of the four eBay factors to assess whether a preliminary injunction against Nest Labs should be granted for alleged patent infringement. Plaintiff's request for a preliminary injunction was denied.
- Submitted expert testimony on behalf of Arkema in a contract dispute in the chemical industry. Testified in proceedings before the American Arbitration Association on the economics of the contract, the value to the parties of the contract, the impact of foreign exchange rate changes on the value of the contract, the competitive alternatives available to the parties, and damages.
- Testified in proceedings before the American Arbitration Association in a contract dispute between defense contractors. Testified on issues related to the materiality of the failure to disclose a government investigation, the economic analysis of a subcontract and alleged joint venture agreement, and damages.
- Served as testifying expert in international arbitration proceedings (International Chamber of Commerce) related to a contract for the construction of an airport. Estimated damages associated with the alleged breach of contract.
- Served as consulting expert in international arbitration proceedings (International Chamber of Commerce) related to a dispute in the pharmaceutical industry. Estimated damages associated with the alleged breach of contract.
- Submitted expert testimony in *T.E. Security Consultants v. DynCorp Int'l*, a contract dispute between defense contractors. Testified on issues of the financial ability of one of the parties to perform on a contract, a party's ability to obtain financing, the economic analysis of an alleged subcontract, the value of alleged trade secrets, and damages.
- Testified at trial in *ZF Meritor LLC v. Eaton Corp.*, a monopolization case involving certain heavy-duty truck components. On behalf of plaintiffs, submitted testimony defining the relevant antitrust market, assessing whether a market participant had monopoly power, and evaluating the harm to competition from certain contracts and the performance of those contracts; also submitted testimony estimating damages. Jury verdict on liability in favor of client, upheld on appeal (*ZF Meritor v. Eaton Corp.*, 696 F.3d 254 (3d Cir. 2012), cert denied, 133 S.Ct. 2025 (2013)). Prior to the damages phase of trial, the parties agreed to a \$500 million settlement.
- Submitted testimony and testified at hearing in *Jenkins v. Entergy Corp.* estimating damages to plaintiffs resulting from an alleged improper energy purchasing scheme; submitted testimony in class certification proceeding.
- Served as consulting expert services to the US Department of Justice in a major government contract dispute. Assessed the economics of a development contract with defense aerospace companies. Analyzed the contractors' financial performance and viability, bankruptcy risks, potential financing sources, project cash-flows, and the impact of contract termination.

- Submitted expert testimony in government procurement litigation matter involving office productivity software. Analyzed financial costs and benefits of software standardization initiative, reviewed product comparisons, analyzed data on software installation and use, evaluated claims regarding alleged product integration and standardization advantages, and analyzed market consequences of government procurement decisions.
- Served as consulting expert on behalf of multiple defendants in several large cases related to the natural gas industry on class certification and damages issues. Alleged conduct involved misreporting of prices to publishers of natural gas price indices.
- Submitted expert testimony in *In re Methionine Antitrust Litigation*, a major price-fixing case involving feed additives on behalf of direct action opt-out plaintiffs. Issues included establishment of liability, estimation of damages, analysis of industry structure, analysis of financial performance, and other pricing-related issues.
- Submitted expert testimony on behalf of indirect purchaser plaintiffs in class certification proceedings in *J&R Ventures, Inc. v. Rhone-Poulenc SA*, a price-fixing case involving feed additives.
- Testified in Delaware Chancery Court in *Frontier Oil Corp. v. Holly Corp.*, a merger-related dispute in the energy industry. Testimony involved the valuation of a potential environmental liability/toxic tort arising from oil and gas operations, including an assessment of the materiality of the liability to the proposed merger.
- Served as consulting expert on behalf of plaintiffs for monopolization cases involving the computer software industry. Assisted with the development of overall case strategy and preparation of economic analysis used in legal filings, analyzed pricing issues, investigated and reviewed allegations of anticompetitive behavior, prepared damage estimates, submitted damage reports to clients, and assisted with settlement negotiations.
- Served as consulting expert on antitrust, pricing, and exclusionary conduct issues related to biotechnology and agricultural products. Analyzed potential anticompetitive harm resulting from a proposed acquisition.
- Developed a state-of-the-art microsimulation model for estimating the future liability of former asbestos manufacturers from personal injury lawsuits. Developed several financial cash-flow models to determine long-term viability of product liability settlement trusts.
- Conducted several valuation studies related to potential future product liability and potential future litigation recoveries. Valuation reports prepared and submitted as part of the acquisition process for due diligence and tax reporting purposes.
- Assessed reliability of statistical study related to pricing accuracy for a large retailer. Analyzed issues related to overall study methodology, sampling bias, and quantification of harm to consumers.

- Submitted expert testimony assessing the damages resulting from defamation in the travel retail industry.
- Conducted an antidumping study to estimate exposure to tariffs in the petrochemical industry.
- Conducted market and industry analyses for various due diligence, breach of contract, bankruptcy, and product liability engagements in the areas of insurance, general aviation, commercial property, electronic funds transfer, restaurant franchising, and construction.

## C.5. Selected energy regulatory experience

- Submitted an affidavit on behalf of the Electric Power Supply Association in *PJM Interconnection, L.L.C.* (FERC Docket No. RM18-1314-000). Evaluated PJM's proposed modifications to its auction market rules to address market distortions caused by the participation of subsidized resources in PJM's capacity market.
- Submitted affidavit in FERC Proceeding related to Grid Reliability and Resilience Pricing (Docket No. RM18-1-000). Responded to DOE's proposal to subsidize uneconomic coal and nuclear units.
- Submitted testimony on behalf of Vote Solar in proceedings before the Public Service Commission of Utah regarding the costs and benefits of distributed solar generation. Responded to Rocky Mountain Power's proposed changes to the Utah residential Net Energy Metering (NEM) program.
- Submitted testimony on behalf of the Energy Freedom Coalition of America in proceedings before the Arizona Corporation Commission regarding a proposal by Tucson Electric Power Company for a residential solar power program. Addressed issues regarding the potential anticompetitive consequences of TEP's proposal.
- Testified on behalf of Florida Power & Light Company in proceedings before the Florida Public Service Commission regarding the potential impact on residential and commercial customers of a proposed base rate increase.
- Testified on behalf of the Maryland Public Service Commission Staff to assess potential market power issues associated with the proposed merger of Exelon Corporation and Constellation Energy Group, Inc. Analyzed changes in market concentration, the definition of relevant geographic markets, and Applicants' proposed mitigation plan. Assessed the economic viability of the facilities selected for divestiture by the Applicants. Provided testimony on the Applicants' proposal to build additional generation as a means of addressing market power concerns raised by the proposed merger.

- Submitted testimony on behalf of Occidental Chemical Company in FERC proceedings (Docket No. ER10-396-000) related to the application by Tres Amigas for authorization to sell transmission services at negotiated rates. Analyzed potential market power issues raised by the application.
- Submitted testimony on behalf of the NRG Companies in FERC proceedings (Docket No. ER08-1209-\_\_\_\_) related to the proposal by ISO New England Inc. and the New England Power Pool Participants Committee to compensate rejected Dynamic and Static De-List Bids in the ISO-NE Forward Capacity Auction.
- Testified on behalf of the New York Power Authority in FERC proceedings (Docket No. ER06-456-000, et al.) related to the proposal by PJM Interconnection to allocate cost responsibility for certain transmission network upgrades included in the baseline PJM Regional Transmission Expansion Plan to merchant transmission projects that interconnect with the PJM transmission network.
- Submitted testimony on behalf of Milford Power Company, LLC, in FERC proceedings (Docket No. ER99-4102-\_\_\_\_) related to the Commission's generation market power screens as applicable to Milford's market-based rate authority.
- Submitted testimony on behalf of Southaven Power and Kelson Energy III in FERC proceedings (Docket No. EC08-\_\_\_\_-000) related to potential market power issues arising from Kelson's proposed acquisition of the Southaven generation facility. Submitted testimony on behalf of Kelson Energy III in FERC Docket No. ER08-\_\_\_\_-000 related to the Commission's generation market power screens as applicable to Kelson's application for market-based rate authority.
- Submitted comments in proceedings before FERC (Docket Nos. RM07-19-000 and AD07-7-000) related to "Wholesale Competition in Regions with Organized Electric Markets." Analyzed economic issues related to FERC's demand response proposals.
- Testified on behalf of Tenaska and Coral Power in proceedings before the Public Utility Commission of Texas (PUC Docket No. 33687) related to the application by Entergy Gulf States, Inc., of its "Transition to Competition Plan." Analyzed issues related to Entergy's business strategy, cost-benefit analysis, cost allocation, cross-subsidization, and potential harm to competition.
- Testified on behalf of Shell Trading Gas and Power Company and Calpine Corp. in proceedings before FERC (Docket Nos. ER97-4166-015, EL04-124-000, et al.) related to the application by the Southern Companies for market based rate authority. Analyzed issues related to the appropriate implementation of the Commission's Delivered Price Test, generation market power, Southern Companies' transmission network, barriers to entry, and affiliate preferences.
- Submitted testimony on behalf of Constellation Energy Commodities Group, Inc., in a complaint proceeding before FERC (Docket No. EL07-47-000) brought by the Illinois Attorney General

against various participants in the Illinois Auction for electric power supplies held in September 2006. Analyzed issues related to the competitiveness of the auction structure, market concentration, the ability of the participants to exercise market power, and allegations of collusion.

- Submitted testimony on behalf of Occidental Chemical Company in FERC proceedings (Docket No. EC07-70-000) evaluating the proposed acquisition of jurisdictional assets of Calcasieu Power, LLC, by Entergy Gulf States, Inc. Analyzed issues related to the impact of the acquisition on market concentration and the ability of the applicant to exercise market power.
- Testified on behalf of BP Canada Energy Marketing Corp. and IGI Resources, Corp., in FERC proceedings (Docket No. RP06-407) related to the application by Gas Transmission Northwest Corporation for market-based rate authority and flexible services rates for certain transportation services provided by the GTN natural gas pipeline.
- Testified on behalf of Occidental Permian Ltd. and Occidental Power Marketing, L.P., in FERC proceedings (Docket No. EL05-19-002 and ER05-168-001) related to the wholesale electric power rates charged by Southwestern Public Service Company. Analyzed issues associated with the appropriate allocation of average system fuel costs and cross-subsidization.
- Submitted testimony on behalf of Occidental Permian Ltd. and Occidental Power Marketing, L.P., in FERC proceedings (Docket No. ER01-205-009, et al.) related to the application by Southwestern Public Service Company for market-based rate authority. Analyzed issues related to generation market power and affiliate abuse.
- Submitted testimony on behalf of Calpine Corp. in FERC proceedings (Docket No. ER05-1065-000) and Louisiana Public Service Commission proceedings (Docket No. U-28155) related to the application by Entergy Services, Entergy Louisiana, and Entergy Gulf States, to establish an Independent Coordinator of Transmission. Analyzed the functions to be performed by the ICT, Entergy's transmission pricing proposal, and its Weekly Procurement Process proposal.
- Submitted testimony on behalf of Calpine Corp. in proceedings before the Louisiana Public Service Commission (Docket No. U-27836) related to the application by Entergy Louisiana, Inc., and Entergy Gulf States, Inc., for approval of the purchase of the Perryville, La., electric generating facility. Analyzed issues of market power and calculated the extent to which the proposed transaction increased market concentration.
- Submitted testimony on behalf of Calpine Corp. and Occidental Chemical Corp. in FERC proceedings (Docket No. ER91-569-023) related to the application by Entergy Services for market based rate authority. Analyzed issues of generation market power, transmission market power, barriers to entry, and affiliate abuse in the Entergy control area. Implemented a model of the Entergy control area transmission constraints in performing the generation market power analysis.



- Submitted testimony on behalf of Calpine Corp. in FERC proceedings (Docket No. ER96-2495-018, et al.) related to the application by AEP Power Marketing, Inc., et al., for market based rate authority. Analyzed issues of generation market power, transmission market power, barriers to entry, and affiliate abuse in the AEP-SPP control area.
- Testified on behalf of the Texas Industrial Energy Consumers in proceedings before the Public Utility Commission of Texas (SOAH Docket No. 473-06-2536 and PUC Docket No. 32766) related to the retail electric power rates charged by Southwestern Public Service Company. Analyzed issues associated with the allocation of average system fuel costs and cross-subsidization.
- Submitted expert testimony on behalf of InterGen in FERC proceedings (Docket No. EC03-131-000) related to Oklahoma Gas & Electric's proposed acquisition of NRG McClain. Analyzed issues of horizontal and vertical market power for a hearing to identify appropriate mitigation measures.
- Submitted expert testimony on behalf of the Independent Energy Producers Association on vertical market power in FERC proceedings (Docket No. ER04-316-000) related to Southern California Edison's proposed acquisition of a Mountainview, California, electricity generating facility and a subsequent interaffiliate Power Purchase Agreement.
- Submitted expert testimony on behalf of Duke Energy in FERC proceedings (Docket Nos. EL00-95-075 and EL00-98-063) related to the California power markets during 2000–2001 and allegations of improper bidding behavior. Analyzed detailed data on individual bids and plant-level generation, performed statistical analysis of “physical” and “economic” capacity withholding, analyzed financial market data, examined alleged evidence of manipulative trading strategies, and assessed evidence of coordinated behavior.
- Submitted expert testimony on behalf of Duke Energy in response to a FERC Show Cause Order (Docket No. EL03-152-000) relating to alleged “gaming” behavior in the California power markets.
- Submitted report for the Independent Energy Producers Association regarding the market price referent methodology for use in California Renewables Portfolio Standards power solicitations in proceedings before the California Public Utilities Commission (Docket No. OIR 01-10-024).

## **C.6. Selected business consulting experience**

- Managed the development of advanced data analytic software based on artificial neural networks for financial services client. Responsible for identifying new product opportunities for client, evaluating feasibility of applications, performing cost-benefit analysis for new product

investment, designing implementation plan, and managing the overall software development process.

- Estimated the future asbestos liability of several companies (public and private) for investment research firms and potential acquirers as due diligence. Analyzed the litigation risks faced by the companies, insurance coverage issues, potential consequences of other developments in the asbestos litigation environment, and financial reporting issues.
- Estimated the value of liabilities for a remainder trust established for a former manufacturer of food products. Potential liabilities were related to environmental remediation costs associated with a “Superfund” site containing hazardous waste.
- Developed a financial simulation model for a major transportation consortium in contract negotiations with the US Department of Defense to determine the appropriate compensation for risk in a long-term supply contract.
- Managed and directed various business consulting projects requiring statistical analysis to guide pricing and marketing decisions.
- Provided strategy consulting to seed-stage start-up companies, including development of business strategy, competitive analysis, intellectual property assessment, development of revenue and cost projections, and formulation of business and financing plan.

## C.7. Publications

- Axelrod, Howard, David DeRamus, and Collin Cain. “The Fallacy of High Prices.” *Public Utilities Fortnightly* 144 (2006): 55–60.

## C.8. Industry presentations

- Renewable Fuels Association, Conference, National Ethanol Conference, February 21, 2011: “Future of Biofuels Tax Policy Panel Discussion.”
- COMPETE and the Electric Power Supply Association, Conference, Empowering Customers Through Competitive Markets, November 5, 2007: “Ensuring Consistent Environmental and Competition Policies in Electricity Markets.”
- Federal Trade Commission, Conference, Energy Markets in the 21st Century: Competition Policy in Perspective, April 10, 2007: “Empirical Analyses of Wholesale Electric Competition and Industry Restructuring.”

- Federal Energy Regulatory Commission, Technical Conference, Generation Market Power and Affiliate Abuse, January 28, 2005: “Comments by David W. DeRamus, PhD.”
- Federal Energy Regulatory Commission, Technical Conference, Acquisition and Disposition of Merchant Generation Assets by Public Utilities, Docket No. PL04-9-000, June 10, 2004: “Comments by David W. DeRamus, PhD.”
- Federal Energy Regulatory Commission Technical Conference, Market-Based Rates for Public Utilities, Docket No. RM04-7-000, June 9, 2004: “Comments by David W. DeRamus, PhD.”
- Electric Power Supply Association, Spring Membership Meeting, April 2004: “Utility Power Supply: Costs and Risks of Vertical Reintegration.”
- American Antitrust Institute, Fourth Annual Energy Roundtable Workshop, January 2004: “Electric Utility Reintegration: Vertical Market Power and Potential Market Foreclosure.”
- Institute of Public Utilities, Annual Conference, December 2003: “Distinguishing Between Market, Regulatory, and Business Failures.”

## **C.9. Professional experience**

Dr. DeRamus was previously a Manager with A.T. Kearney and a Senior Manager with KPMG. In both positions, he had broad client responsibility including the management of complex litigation, transfer pricing, and business consulting engagements.

## **C.10. Professional associations**

- American Bar Association
- American Economic Association
- Energy Bar Association

## **C.11. Related activities and honors**

- German Academic Exchange Service Grant (awarded)
- Council for European Studies Pre-Dissertation Fellowship (Columbia University)
- Dean’s University Fellowship (University of Massachusetts)
- Herbert Lehman Fellowship (New York State)

Expert Report of David W. DeRamus, PhD

## **C.12. Languages**

- French (fluent)
- German (fluent)
- Spanish (intermediate)